IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8459 of 2006

Union Bank of India
Employees' Union, Pune Petitioner

Vs.

Union of India & anr. Respondents

Mr.D.J.Bhanage for petitioner.
Mr.Ashok Shetty with Ms.Rita Joshi for resp.no.2.

CORAM: B.H.MARLAPALLE, J.

November 27, 2007.

P.C.

1. Heard Mr.Bhanage, the learned counsel for the petitioner - Union and Mr.Shetty with Ms.Rita Joshi, the learned counsel for the respondent no.2. Respondent no.1 is a formal party. This petition under Article 227 of the Constitution impugns the Award passed by the learned Presiding Officer of the Central Government Industrial Tribunal No.1 at Mumbai in Reference No.CGIT-45 of 2003 on 8th December 2005.

2. As per the reference order passed by the Government of India, Ministry of Labour on 29/9/2003 under Section 2A read with Section 10 of the Industrial Disputes Act, 1947 the following demand

was referred to the Industrial Tribunal:

> "Whether the action of the management of Union Bank of India, Mumbai in enhancing the rate of interest on Clean Loan to 16 % per annum without giving a notice of change under Section 9-A of the ID Act, 1947 is lawful and justified. If not, what relief are the workmen concerned entitled to?"

3. Initially the Central Government had turned down the reference as per the order dated 24/5/1995 and, therefore, the Union approached this Court in Writ Petition No.1479 of which was allowed and the Respondent - Bank had filed Letters Patent Appeal No.359 of 2002 which came to be dismissed by a Division Bench of this Court and consequently the referenced referred to hereinabove was made afresh.

4. The Union had filed its statement of claim on 14/10/2003 and alleged that Circular No.3552 dated 2nd February 1990 modifying the earlier Circular No.3440 dated 17th May 1989 amounted to illegal change within the meaning of Section 9-A of the I.D. Act. In short it was contended by the Union that any

change sought to be made in the existing concessions / privileges and/or rights vested over a period of time could not be modified without giving a notice as contemplated under Section 9-A of the I.D. Act, though the Bank is empowered to undertake such modifications and the Union contended that resorting to such actions was an act of unfair labour practice., The Bank by filings its Written Statement had opposed the reference and pointed out that the earlier Circular viz. Staff Circular No.3440 was not amended, revised or withdrawn and it remained in force as its inspite of the subsequent Staff Circular No.3552 dated 2/2/1990 and so long as the Staff Circular No.3440 was not withdrawn or modified in any way, the question of giving a notice under Section 9-A of the I.D. Act did not arise before issuing the Staff Circular No.3552. The Bank further claimed that it was not guilty of any act of unfair labour practice and the reference was required to be dismissed.

5. On considering the evidence as well as the rival contentions of the parties the Tribunal by the impugned order at the first instance held that the Bank was guilty of unfair labour practice in issuing

the Staff Circular No.3552 but so far as Staff Circular No.3440 was concerned, it remained in-tact and there was no change. Consequently, as per the Tribunal, it was not necessary for the Bank to issue notice of change while coming out with the Staff Circular No.3552.

6. Mr.Bhanage, the learned counsel for the petitioner mainly contended that once the Tribunal recorded a finding that the Staff Circular No.3440 had extended concessions / privileges and they could not be changed without giving under Section 9-A of the I.D. Act, it was incumbent upon the Tribunal to hold that the subsequent Circular bearing Staff Circular No.3552 was indeed an act of unfair labour practice and notice as required under Section 9-A of the I.D. Act was required to be issued before the same was brought into force. Mr.Shetty, the learned counsel for the respondent - Bank does not agree to this view and he has strenuously urged in support of the impugned order. He has relied upon a Division Bench judgment of the Orissa High Court in the case of Management of Orissa Mining Corporation Ltd. Vs. Its Workmen (represented through the General Secretary), Orissa Mining Workers' Federation **[2004**

LLR 148] and in the impugned order the Tribunal has also referred to the said decision.

7. The only point that requires consideration is whether the Tribunal was justified in law to hold that the Staff Circular No.3440 dated 17/5/1989 was not varied in any manner and it continued to apply and, therefore, it was not necessary to issue the notice contemplated under Section 9A of the I.D. Act before issuing Staff Circular No.3552.

8. Staff Circular No.3440 is in modification of the earlier Circular No.3425 and it declared a scheme for Clean Loan brought into effect from 1st April 1989. All permanent full time members of the Award/Workmen staff (Clerical and subordinate staff) having completed three years of service in the Bank were eligible. Whereas the permanent part time employees on scale wages (those on stipend excluded). In cases where part time employees are subsequently taken up on full time basis the period of three years for the purpose of eligibility for clean loan would be reckoned from the date of appointment as permanent part time employee of the Bank, provided such employee has put in an interrupted service till he is

taken up on full time basis. There were two categories of Clean Loan, Category I and Category II. In Category 1, loans for the undermentioned purposes / ceremonies were available:

(a) (i) Acquiquei of any family of any family members.

(ii) Anhaprashna of any family members.

(iii) Circumcision ceremony performed by Muslims.

(iv) Ear boring ceremony.

(v) Holy communion or Baptism - Naming

(vi) Marriage ceremony of the employee / family member.

(vii) Munden in case of children.

(viii) Navjot ceremony of children.

(ix) Thread ceremony.

(x) Upanayan Ceremony.

In addition in category (I), the loan was available for the following purposes as well:

(b) Medical treatment for himself or any member of family.

(c) Education in India of the children and dependent brothers / sisters or education abroad of members of the members of family.

(d) Repairs to own house of the workman, and

(e) Obsequial expenses of close relatives including expenses for Death anniversary ritual and Pind Daan of any member of the family.

. In Category II, loan for following purposes was available:

(a) Loan for the purpose of purchasing car / scooter / motor cycle (new / second hand).

(b) Loans for the purchase of consumer goods.

. The maximum quantum of Clean Loan for different categories to the members of the Award Staff under different categories to the members of the above-mentioned staff was as under:

(a) Clerks: Five times Basic Pay as revised in terms oft he Vth Bipartite Settlement dated 10th April 1989 but not exceeding Rs.10,000/- (the Basic pay will be exclusive of the Special Allowances payable to Clerical employees).

(b) Sub staff on full wages: Five times Basic Pay as revised in terms of the Vth Bipartite Settlement dated 10th April 1989 but not exceeding Rs.5,000/- (the Basic pay will be exclusive of the Special Allowance payable to Subordinate Staff).

(c) Part time Sub staff: Five times revised basic pay as in terms of Vth Bipartite Settlement dated 10th April 1989 or

proportionate ratio of their scale not exceeding Rs.5000/-. Permanent part time employees drawing 1/3 or 1/2 or 3/4 of the scale wages will be sanctioned Clean Loan under Category I for the purposes of his/her marriage and medical treatment of his/her family members not exceeding the amount of loan calculated in proportion to the basic salary drawn by them.

For the purposes covered under Category II the maximum amounts were fixed as under:

(a) Clerks: 90% of the cost of consumer goods / vehicle or Rs.15,000/- whichever is less.

(b) Full time sub-staff: 90% of the cost of the consumer goods or Rs.10,000/- whichever is less. 90% of vehicle or Rs.10,000/- whichever is less.

(c) Part time sub-staff: Full cost of bicycle. They are not eligible for loan for consumer articles or other vehicles.

Repayment details of both the categories were as under:

Category I : The clean loan will be recovered in 40 installments directly from the salary of the borrower commencing with the succeeding month in which the loan is granted. Any borrower, if he so desires, may repay the loan in lesser number of installments.

Category II: The Clean Loan will be recovered in 60 installments directly from the salary of the borrower commencing with the succeeding month in which the loan is granted. Any borrower if he so desires, may repay the loan in lesser number of installments.

The maximum amount under Categories I and II was fixed at aggregate Rs.20,000/-.

On the issue of repayment of the loan, there were certain restrictions imposed and it was clarified that the clean loans sanctioned under the scheme carried interest at the rate of 4 per cent per annum with half yearly rests.

9. Staff Circular dated 2/2/1990 which was in

fact subject matter of challenge in the Reference did not effect any modifications / changes so far as Category No.I is concerned covered in Staff Circular No.3440. This circular revised the guidelines only in respect of Category No.II i.e. Clean Loan for the purchase of scooters / motorcycles (new / second hand). So far as the eligibility is concerned, it stated that the workmen/employees drawing pay of Rs.1200/- per month or more and the term "Pay" shall include Basic Pay, Stagnation Increment and Officiating Allowances, if any, admissible under the Fifth Bipartite Settlement, but not Special Allowance. Maximum limit of the amount of loan was fixed at Rs.15,000/- or 90 per cent of the cost of the vehicle, whichever is less. The loan together with interest thereon was repayable in note more than 84 equal monthly installments. The rate of interest was fixed at 7.5 % per annum (simple). What is important to note in the Circular is the General Conditions set out therein and reproduced as under:

> "Purchase of the vehicle should be made within one month from the date of withdrawal of the advance.

> The above terms and conditions would come into effect from 18th September 1989. It is hereby clarified that the revised guidelines will apply to all employees who joined the Bank on or after 18th September 1989. Those employees who were already in service as on 17th September 1989 will have the option to be governed by the existing guidelines or the new set of guidelines. The option once exercised will be final and shall remain operative for the rest of the service of the employee concerned. A draft of the option letter is enclosed. This option must be exercised within three months effective from 2nd February 1990."

10. Thus it is clear that the Circular bearing Staff Circular No.3440 continued to apply to the employees who had joined prior to 18th September 1989 and they had the option to furnish for being governed either by Staff Circular No.3440 or Staff Circular No.3552. The option once exercised would be final and shall remain operative for the rest of the service of the employee concerned. By the subsequent Staff Circular No.3709 dated 2nd March, 1991 the rate

of interest was revised to 16 per cent per annum.

11. The Union raised its grievance for the first time vide representation dated 3/8/1992 but only in respect of the employees at Pune establishments of the Bank. Section 9-A of the I.D. Act reads as under:

> "**9A. Notice of Change -** No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected or
>
> (b) within twenty-one days of giving such notice..."

The relevant entry in the Fourth Schedule is Entry no.8 viz. "Withdrawal of any customary concession or

privilege or change in usage."

12. The Tribunal, as noted earlier, by its impugned order held that Circular No.3440 extended privileges / customary concessions to the members of the Union and any change sought to be brought in the same would call for a notice as envisaged under Section 9A of the ID Act. However, on detailed examination of the evidence and the rival contentions recorded in writing it held that the subsequent circular dated 2/2/1990 did not amount to any revision, alteration or amending so as to adversely affect the employees who were on the rolls of the Bank prior to 18th September 1989. The Union is aggrieved by this finding. As is clear by mere reading of both the Circulars and more particularly the general conditions set out in Staff Circular No.3552 that the earlier Staff Circular No.3440 was not withdrawn, was not revised or amended in any way and it was made clear that the employees on the rolls of the Bank prior to 18th September 1989 will continue to be governed by the same. However, those who had not availed of the clean loan facility under Staff Circular No.3440 would have an option to be governed either by Staff Circular No.3440 ;or Staff

Circular No.3552. There was no element of compulsion and, as noted earlier, Staff Circular No.3552 in no way had loans to be granted in respect of Category No.I under Staff Circular No.3440. So far as the second category is concerned, it was options for those employees who were on the rolls of the Bank prior to 18th September 1989 and if they exercised their choice either to opt for staff circular No.3440 or Staff Circular No.3552, that would be binding and they would not be permitted to change the option once exercised. Staff Circular No.3552 did not make it compulsory for the employees already on the rolls prior to 18th September 1989 to opt for the revised scheme under Category II. It was purely an option provided to such employees. They were supposed to make a choice assessing the needs of higher amounts and consequently the payment of higher interest rate and the loan to be repaid in more number of EMIs. At the same time if any employee deserved to be governed by Staff Circular No.3440, he was free to do so and the Staff Circular No.3552 would in no way affect his eligibility for loan either under Category No.II.

13. Mr.Shetty, the learned counsel for the Bank relied upon a three-Judge Bench decision in the case

of Hindustan Lever Ltd. Vs. Ram Mohan Ray & ors. **AIR 1973 SC 1156]** and more particular the following observations:

> "...The word "affected" in the circumstances could only refer to the workers being adversely effected and unless it could be shown that the abolition of one department has adversely effected the workers it cannot be brought under item 11. The same consideration applies to the question of change in usage under item 8...."

14. It is also required to be noted that benefits flowing from Staff Circular No.3440 were not an outcome of any bipartite or tripartite settlement between the parties and it was the circular issued by the Bank on its own volition and in keeping with the policy framed by the Government of India. When it realised that the vehicle prices as well as the prices of other consumer durable had gone up, it decided to give an option to whose who wanted to go in for higher amounts and willing to pay higher rate of interest, at the same time by keeping in-tact the scheme framed under Staff Circular No.3440 for both

the categories. If there was no choice available to the employees engaged prior to 18th September 1989, there may be some scope to debate on the issue of Circular NO.3552 adversely affecting such employees in respect of the Clean Loan in Category II. But this is not the case on hands and the Staff Circular No.3552 is clear an unambiguous giving options to the employees either to be covered by Staff Circular No.3440 or to opt for Staff Circular No.3552. In my opinion, the view taken by the Tribunal in the impugned order is in keeping with the scheme under both the Circulars and read with the provisions of Section 9A as well as the Fourth Schedule of the I.D. Act. There was no adverse effect on the employees who were on the rolls of the bank prior to 18th September 1989 by issuance of the Staff Circular No.3552 and they were left to their choice. Hence the challenge to the impugned order must fail at the threshold.

15. Petition is rejected summarily.

(B.H.MARL